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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RUSSELL JASON DAVIS,

Defendant and Appellant.

F078042

(Super. Ct. Nos. BF153366A,
BF166967A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Snauffer, J., Poochigian, Acting P.J., and Meehan, J.

STATEMENT OF THE CASE

Case No. BF153366A

In a complaint filed in the Kern County Superior Court on February 19, 2014, appellant Russell Jason Davis was charged, in count 1, with illegally driving or taking a vehicle belonging to David McCabe on February 16, 2014, having been convicted of a violation of Vehicle Code section 10851, subdivision (a) in 2005, a felony violation of Penal Code section 666.5, subdivision (a). In count 2, he was charged with possession of methamphetamine on the same date, in violation of Health and Safety Code section 11377, subdivision (a), a felony. In count 3, he was charged with possession of burglar's tools, on the same date, in violation of Penal Code section 466, a misdemeanor.

As to counts 1 and 2, it was alleged, pursuant to Penal Code section 667.5, subdivision (b), that he served a prior prison term for a prior conviction of a violation of Health and Safety Code section 11377, subdivision (a), in 2004, a violation of Vehicle Code section 10851, subdivision (a), in 2005, and another violation of Health and Safety Code section 11377, subdivision (a), in 2009.

Case No. BF166967A

In a complaint filed in the Kern County Superior Court on January 23, 2017, Davis was charged, in count 1, with escape by means of force or violence from the Sheriff's electronic monitoring program on January 7, 2017, a felony violation of Penal Code section 4532, subdivision (b)(2). In count 2, he was charged with willfully failing to return to confinement in the Sheriff's monitoring program on the same date, in violation of Penal Code section 4532, subdivision (a), a felony.

As to counts 1 and 2, it was alleged, pursuant to Penal Code section 667.5, subdivision (b), that he served a prior prison term for a prior conviction of two violations of Health and Safety Code section 11377, subdivision (a) in 2004, three violations of Vehicle Code section 10851, subdivision (a), two in 2004 and one in 2005, and another

two violations of Health and Safety Code section 11377, subdivision (a), in 2008 and 2009.

No Contest Pleas and Sentence

Davis agreed to enter a plea of no contest to count 1 (Pen. Code, § 666.5, subd. (a)) of the complaint in case No. BF153366A. He agreed to a stipulated sentence of one third of the mid term to be served consecutively to the sentence in case No. BF152628A. The plea was accepted, and the remaining counts were dismissed. He was sentenced to a consecutive eight months in the Kern County jail, pursuant to Penal Code section 1170, subdivision (h).

Davis also entered a plea of no contest to count 3 of the complaint in case No. BF166967A, as amended. The complaint was amended to charge, in count 3, that he violated Penal Code section 4532, subdivision (b)(1).¹ He agreed to a stipulated sentence of eight months, one third of the mid term, to be served consecutively to the sentence in case Nos. BF153366A and BF152628A.² The plea was accepted, and the remaining counts were dismissed. It was stipulated that the case would be resentenced as a state prison term, and that the total term would be seven years and four months.³

The previously imposed sentence in case Nos. BF153366A and BF152628A was set aside. Davis received a total state prison term of seven years and eight months. The

¹ The amended complaint is not part of the record on appeal.

² Based on the record presented, case No. BF152628A was a prior case, which is not included in this appeal.

³ There is a four month discrepancy between the initial plea and the sentence imposed on May 28, 2014, in case No. BF153366A, which was subsequently vacated, and the final sentences imposed on December 1, 2017. Based upon the record submitted, this apparently arose because one third the mid term on count 1 (Pen. Code, § 665.5, subd. (a)) of case No. BF153366A was in fact one year (2, 3, 4 triad), and not eight months as had been originally imposed. No party has objected to the final combined sentences of 7 years, 8 months on all three cases, despite ample opportunity to do so. This court, independently reviewing the record, finds that the sentences pronounced on December 1, 2017, were correct.

court imposed a consecutive one-year term (one third of the mid term) for count 1 of case No. BF153366A to be served consecutively to the six year term imposed in case No. BF152628A. The court imposed a consecutive eight-month term (one third of the mid term) for count 3 of case No. BF166967A to be served consecutively to the term imposed in case No. BF153366A.

Davis was ordered to pay a felony restitution fine in the amount of \$280 for case No. B152628A and \$300 for the remaining two cases. A parole revocation fine in the same amount was imposed and stayed. A court operations assessment of \$120 and a conviction assessment of \$90 were imposed. He was given credit for 1964 days in custody – 1020 days of actual custody and 944 days of conduct credit – against the sentence in case No. B152628A. He was given credit for 20 days in custody – 10 days of actual custody and 10 days of conduct credit – against the sentence in case No. BF153366A.

STATEMENT OF FACTS

It was stipulated that there was factual basis for the plea. The facts are taken from the complaints.

As to case No. BF153366A, on February 16, 2014, appellant drove or took a Honda automobile belonging to David McCabe without his consent and with the intent to deprive him of title or possession.

As to case No. BF166967A, on January 7, 2017, appellant was confined by the Kern County Sheriff's electronic monitoring program. He escaped, or attempted to escape, without the use of force or violence.

STATEMENT OF APPELLATE JURISDICTION

Davis appeals, pursuant to Penal Code section 1237.5, following a plea of no contest for violating Penal Code sections 666.5, subdivision (a), and 4532, subdivision (b)(1), entered on May 28, 2014 and November 17, 2017. This appeal is from an order which finally disposes of all issues between the parties. (California Rules

of Court, Rule 8.304.) The appeal is made after a plea but is limited to matters occurring after the entry of the plea which do not challenge the plea, and thus lies pursuant to California Rules of Court, rule 8.304, subdivision (b). Notice of appeal was untimely filed on September 4, 2018, with permission of the Fifth District Court of Appeal.

APPELLATE COURT REVIEW

Davis's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Davis was advised he could file his own brief with this court. By letter on November 30, 2018, we invited Davis to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.